

OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES



CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE

Historical Overview of OSC

- Immigration Reform and Control Act of 1986 (IRCA)
- Initiated Employer Sanctions for Knowingly Hiring Undocumented Workers
- Established Form I-9 Employment Eligibility Verification Process
- Created OSC to Enforce Anti-Discrimination Provision of the Immigration and Nationality Act (INA)



Resulting Discrimination and Impact of Employer Sanctions

- U.S. Government Accountability Office (GAO) Report (1990) Found Widespread Pattern of Discrimination:
 - Against citizens/legal workers
 - Against persons who appeared foreign
 - Against persons with foreign accents
- 19% of employers (891,000), hiring 6.8 million workers/year, BEGAN discriminatory practices
- **Concluded: *Only* Asians/Hispanics harmed by implementation of the 1986 law**



Prohibited Conduct Under the INA's Anti-Discrimination Provision

8 U.S.C. 1324b

- Citizenship/Immigration status discrimination
- National origin discrimination
- Document abuse
- Retaliation



Citizenship/Immigration Status Discrimination:

With Respect to Hiring, Firing, and Recruitment or Referral for a Fee

- All employers with more than 3 employees
- Protected Persons: US citizens, nationals, asylees, refugees, temporary residents, and LPRs
- Excludes LPRs who **do not apply** for citizenship within 6 months of eligibility



Persons Not Covered



- Non-Immigrant Visa Holders
- Asylum Applicants
- Lawful Permanent Residents who **have not applied** for naturalization within 6 months of their eligibility
- Undocumented Workers



Examples of Citizenship/Immigration Status Discrimination

Citizen only hiring policies.

Exceptions:

- Required by law, regulation, or government contract
- Can prefer equally qualified US citizen

But See:

Mesa Airlines: Cannot give US citizens priority without considering immigrants



Examples of Citizenship/Immigration Status Discrimination

- **Refusing to hire Asylees/Refugees:**
 - Refusing to hire an asylee because EAD had future expiration date
 - Refusing to hire an asylee for driving position because routes are located in both the U.S. and Canada



Examples of Citizenship/Immigration Status Discrimination

- **Preferring undocumented workers**
- **Preferring H-1B, H-2A or other temporary workers**
- **Different hiring procedures for US citizens and immigrants**
 - Required immigrants, or those who appeared foreign, to show work documents before application; but US citizens, or those who appeared to be US citizens, provided employment application without question.
- **Web-Based Want-Ads**



National Origin Discrimination

Discrimination linked to person's place of birth, country of origin, ancestry, native language, accent, perceptions...

- With respect to hiring, firing, recruitment or referral for a fee
- All employers with more than 3 and fewer than 15 employees
- Protected Persons: US citizens and nationals, and legal workers



Document Abuse

...when employers request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents or specify certain documents over others with the intent to discriminate on the basis of citizenship status or national origin.

Examples:



- Requiring those who appear foreign to show documents proving status
- Greater scrutiny and rejection of valid documents from immigrants
- Covers all employers of more than 3 employees
- Protects: U.S. Citizens, nationals, and all legal workers



Intimidation or Retaliation

- Person or entity may not: Intimidate, Threaten, Coerce, or Retaliate against any person.
- To interfere with right/privilege secured under Section 1324b

OR

- Because person intends to, or has:
 - Filed a charge or complaint, or
 - Testified, assisted or participated in an investigation or hearing



How to File a Charge with OSC:

- Charge forms must be filed within 180 days of alleged discrimination
- Charge Forms available from OSC Website in English, Spanish, Vietnamese and Chinese:
www.justice.gov/crt/osc
- Charges may be filed in any language
- Injured parties or advocates can file charges
- OSC will complete investigation within 7 months
- For further information, charge forms, or any questions, contact OSC's Worker Hotline:
1-800-255-7688



Discrimination Charge Process

Alleged discrimination occurs

- Charging party has 180 days to file a charge with OSC
- OSC begins the investigation

Within next 120 days, OSC notifies the parties of 4 possibilities:

1. ***OSC finds no discrimination:*** Within 90 days of receipt of OSC's notification, charging party may still file a complaint with the Administrative Law Judge (ALJ)
2. ***OSC does not make a decision:*** OSC continues its investigation of the charge—within 90 days of OSC's notification, charging party or OSC may file a complaint with the ALJ. OSC may also file a complaint with the ALJ during this time.
3. ***OSC finds discrimination and seeks resolution:*** Within 90 days of receipt of OSC's notification, charging party or OSC files complaint with the ALJ
4. ***OSC files a charge*** with the Office of Chief Administration Hearing Officer (OCAHO) .



Possible Outcomes Following Discovery of Discrimination

- Settlement attempts are made, usually before complaints are filed with **OCAHO**
- If settlement attempts are unsuccessful, complaints are filed and there is a hearing with the ALJ
- The ALJ files an order finding either reasonable cause or no reasonable cause to believe discrimination occurred
- In response, either party may appeal the decision to the U.S. Court of Appeals and further appeal may be made to the U.S. Supreme Court



Remedies

- Hire or rehire
- Back pay
- Cease and desist
- Civil penalties
- Training
- Monitoring
- Attorney's fees



Civil Penalties

Citizenship Status Discrimination/National Origin Discrimination

- 1st Violation → \$375 - \$3,200
- 2nd Violation → \$3,200 - \$6,500
- Subsequent Violations → \$4,300 - \$16,000



Civil Penalties continue to increase

Document Abuse Violations → \$110 - \$1,100

Civil Penalties continue to increase



FORM I-9

The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.

All employees, citizens, and noncitizens hired after November 6, 1986, and working in the United States must complete Form I-9.

Section 1 must be completed no later than the time of hire.

Section 2 must be completed within 3 business days of the first day of work

OMB No. 1615-0047; Expires 06/30/08
Form I-9, Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last First Middle Initial Maiden Name

Address (Street Name and Number) Apt. # Date of Birth (month/day/year)

City State Zip Code Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
☐ A citizen of the United States
☐ A noncitizen national of the United States (see instructions)
☐ A lawful permanent resident (Alien #) _____
☐ An alien authorized to work (Alien # or Admission #) _____ and (expiration date, if applicable - month/day/year) _____

I attest, under penalty of perjury, that I am (check one of the following):
☐ A citizen or national of the United States
☐ A permanent resident (Alien #) A _____
☐ An alien authorized to work until _____ or Admission #) _____

Employer's Signature Date (month/day/year)

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature Print Name

Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative Print Name Title

Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Hire (if applicable) B. Date of Rehire (month/day/year) (if applicable)

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: _____ Document #: _____ Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative Date (month/day/year)

Form I-9 (Rev. 06/05/07) N



Form I-9: Section 1

Employee Information and Verification

- **ALL Employees** must complete, sign, & date Section 1 *at the time employment begins*

completed and signed by employee

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.			
Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.		I attest, under penalty of perjury, that I am (check one of the following). <input type="checkbox"/> A citizen of the United States <input type="checkbox"/> A noncitizen national of the United States (see instructions) <input type="checkbox"/> A lawful permanent resident (Alien #) _____ <input type="checkbox"/> An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year)	
Employee's Signature		Date (month/day/year)	
Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.			
Preparer's/Translator's Signature		Print Name	
Address (Street Name and Number, City, State, Zip Code)			Date (month/day/year)



I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #) _____
- ☐ An alien authorized to work (Alien # or admission #) _____
until (expiration date, if applicable) _____

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following).

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #) _____
- ☐ An alien authorized to work (Alien # or Admission #) _____
until (expiration date, if applicable - month/day/year) _____

Employee's Signature

Date (month/day/year)

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)



Employer Hotline: 1-800-255-8155
Employee Hotline: 1-800-255-7688

**Office of Special Counsel for
Immigration-Related Unfair Employment Practices**

☐ An alien authorized to work (Alien # or admission #) _____
until (expiration date, if applicable) _____

- Do refugees and asylees always have an expiration date?
- What if worker possesses an unrestricted Social Security card and driver's license, but **NOT** an EAD?
- If no expiration date, write: ___/___/___ "N/A – Asylee" OR
 ___/___/___ "N/A – Refugee"

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.			
Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following).

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #) _____
- ☐ An alien authorized to work (Alien # or Admission #) _____
until (expiration date, if applicable - month/day/year)

Employee's Signature

Date (month/day/year)

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

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Employee Hotline: 1-800-255-7688



Office of Special Counsel for
Immigration-Related Unfair Employment Practices

Form I-9: Section 2

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).			
List A	OR	List B	AND List C
Document title: _____		_____	_____
Issuing authority: _____		_____	_____
Document #: _____		_____	_____
Expiration Date (if any): _____		_____	_____
Document #: _____		_____	_____
Expiration Date (if any): _____		_____	_____
CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)			
Signature of Employer or Authorized Representative		Print Name	Title
Business or Organization Name		Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

– Categories of acceptable documents:

- List A (Both Identity & Employment Eligibility)
- List B (Identity Only)
- List C (Employment Eligibility Only)



Form I-9: Section 2

- **Additional List C Documents:**

- Unexpired EAD issued by DHS
- Form I-94 identifying the holder as an asylee (by stating "asylum", "asylee" or appropriate provision of law)
- Other DHS document that identifies the holder as authorized to work incident to status—asylee, lawful permanent resident, or refugee (except for the Form I-94 identifying the holder as a refugee, which is considered a receipt only)
- Does **NOT** include Immigration Judge's decision
- Special Note: I-94 with errors



Form I-9: Section 2

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name	Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

- I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed documents appear to be genuine and to relate to the employee named...
- Record document(s) in appropriate column
- Sign and date certification section



Form I-9: Section 3

Section 3. Updating and Reverification. To be completed and signed by employer.	
A. New Name <i>(if applicable)</i>	B. Date of Rehire <i>(month/day/year) (if applicable)</i>
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. Document Title: _____ Document #: _____ Expiration Date (if any): _____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date <i>(month/day/year)</i>

- **DO** provide employee with at least 120 days notice
- **DO** accept any document from List A or List C
- **DO NOT** reverify List B identity documents
- **DO NOT** reverify employees who present Permanent Resident Cards with future expiration dates
- **DO NOT** require specific document for reverification; can accept unrestricted Social Security cards



Social Security Number Verification Service: SSNVS

- May Be Used **Only** For Wage Reporting (W-2) Purposes
- Illegal To Use **Before** Hiring A Worker
- Must Apply **Consistently** To All Workers

A Mismatch “is not a basis, in and of itself to take any adverse action such as laying off, suspending, firing or discriminating against the employee.”

www.ssa.gov/employer/ssnvspamphlet.htm



How to Respond to Social Security “No-Matches”

- Can come from a variety of sources
- Check records for errors
- Inform employee of the No-Match
- Request that employee check his or her records for errors
- Refer employee to the Local SSA Office for assistance
- Submit any employer or employee corrections to the SSA



E-Verify Program

Electronic Verification of
Employment Eligibility by DHS and SSA



Employer Hotline: 1-800-255-8155
Employee Hotline: 1-800-255-7688



Office of Special Counsel for
Immigration-Related Unfair Employment Practices

2007 DHS–sponsored (Westat) Study Found:

Refusals to hire/premature terminations

**Not informing workers of E-Verify participation
Not allowing workers to correct errors**

Inaccuracy of DHS and/or SSA database

Pre-Employment Screening

Privacy and training concerns

Federal Contractors and E-Verify

As of September 8, 2009, an E-Verify clause appears in many federal contracts requiring employers to:

- Enroll in E-Verify
- Verify new hires and existing employees assigned to work on the contract using E-Verify

Federal Contractors Should Remember:

- Only federal contractors and subcontractors with a qualifying contract may verify existing employees using E-Verify
- Review the E-Verify Memorandum of Understanding to determine if the employer may rely on an existing employee's previous Form I-9 to run the E-Verify query for that employee
- Only verify an employee using E-Verify once (do not verify an employee assigned to a contract who was already verified at the time of hire using E-Verify)
- Do not use E-Verify for an employee hired on or before November 6, 1986



E-Verify DOs



- Use program in a non-discriminatory manner, without regard to the national origin or citizenship status of your employees
- Use program for new employees after they have completed the I-9 Form
- Promptly provide and review with the employee the notice of tentative nonconfirmation
- Promptly provide the referral notice from the Social Security Administration (SSA) or Department of Homeland Security (DHS) to the employee who chooses to contest a tentative nonconfirmation
- Allow an employee who is contesting a tentative nonconfirmation to continue to work during that period
- Check E-Verify daily for updates in connection with the tentative nonconfirmation
- Contact E-Verify if you believe an employee has received a final nonconfirmation in error



E-Verify DOs (Continued)



- Display the required E-Verify participation poster and the required antidiscrimination poster issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC)
- Accept any Form I-9 List B document with a photo from an employee who chooses to provide a List B document
- Secure the privacy of employees' personal information and the password used for access to the program
- Delay running an E-Verify query for an employee who has not yet been issued a Social Security number until the Social Security number is issued
- Allow an employee who has not been issued a Social Security number to work throughout the period that the employee is waiting for his or her Social Security number to be issued



E-Verify Don'ts

- Use program to verify any employee hired on or before November 6, 1986
- Use program to verify current employees, unless permitted as a federal contractor
- Use program for an existing employee previously verified through E-Verify at the time of hire, even as a federal contractor
- Use program selectively based on a “suspicion” that an employee may not be authorized to work in the U.S. or based on national origin
- Use program to pre-screen employment applicants unless you are a State Workforce Agency
- Influence or coerce an employee’s decision whether to contest a tentative nonconfirmation



E-Verify Don'ts (Continued)

- Terminate or take adverse action against an employee who is contesting a tentative nonconfirmation, including denying or reducing scheduled hours, delaying or preventing training, mistreating the employee, requiring the employee to work longer hours, requiring the employee to work in poorer conditions, refusing to assign the employee to work on a federal contract or other job, or subjecting the employee to any assumption that s/he is unauthorized to work during this period, unless and until receiving a final nonconfirmation or no show response
- Ask an employee to obtain a printout or other written verification from SSA or DHS when referring that employee to either agency
- Ask an employee to provide additional documentation of his or her employment eligibility after obtaining a tentative nonconfirmation for that employee
- Request specific documents in order to activate E-Verify's photo tool feature
- Run an E-Verify query for an employee who is waiting for his or her Social Security number to be issued until the employee is issued a Social Security number





- OSC works in partnership with other federal, state and local civil rights and labor law agencies as well as trade associations, labor and community groups. If we can't help you, we can direct you to the appropriate office for assistance.



Employer Hotline: 1-800-255-8155
Employee Hotline: 1-800-255-7688

Office of Special Counsel for
Immigration-Related Unfair Employment Practices

Telephone Interventions



- As an alternative to the charge process, OSC resolves over 150 cases annually through its speedy Telephone Intervention System for willing employers and workers.



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Employee Hotline: 1-800-255-7688

Office of Special Counsel for
Immigration-Related Unfair Employment Practices

Rights Protected by other Offices in the Civil Rights Division

Coordination & Review Section (COR)

- Enforces laws that prohibit discrimination because of national origin, race or color by *recipients of federal funds*

Criminal Section (CRM)

- Prosecutes those who are accused of using force or violence to interfere with a person's federally protected rights because of that person's national origin
- These rights include areas such as housing, employment, education, or use of public facilities

Disability Rights Section (DRS)

- Investigates discrimination complaints based on disability by enforcing the Americans with Disabilities Act (ADA)

Educational Opportunities Section (EOS)

- Enforces laws in elementary and secondary schools as well as public colleges and universities and also addresses discrimination in all aspects of education

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Employee Hotline: 1-800-255-7688



**Office of Special Counsel for
Immigration-Related Unfair Employment Practices**

Rights Protected by other Offices in the Civil Rights Division

Employment Section (ELS)

- Investigates complaints of a pattern or practice of illegal employment discrimination by a state or local government

Housing and Civil Enforcement Section (HCE)

- Investigates complaints of a pattern or practice of discrimination in access to or equal enjoyment of a public accommodation
- Discrimination complaints for loans with purposes other than housing (such as a car loan)

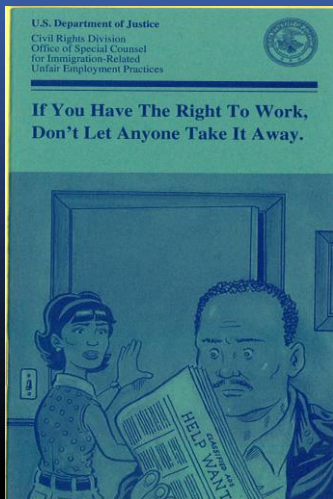
Special Litigation Section (SPL)

- Enforces the constitutional rights of institutionalized persons
- Investigates complaints that a police department has a pattern or practice of discriminating on the basis of national origin

Voting Section (VOT)

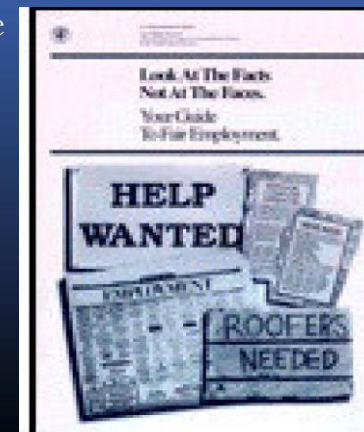
- Investigates discrimination complaints in the voting process or denying assistance to a voter when casting a ballot by enforcing provisions of the Voting Rights Act, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act and the Help America Vote Act





Cartoon Booklet

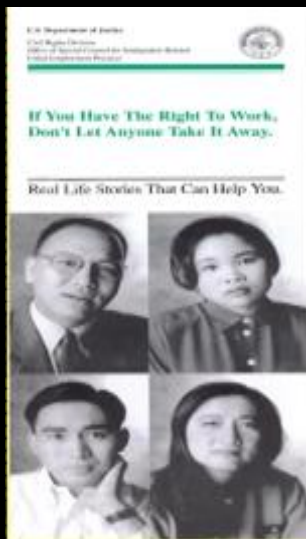
Employer Guide



If you have any questions, or
need printed materials, call
the toll free number:

Employee: 1-800-255-7688

Employer: 1-800-255-8155

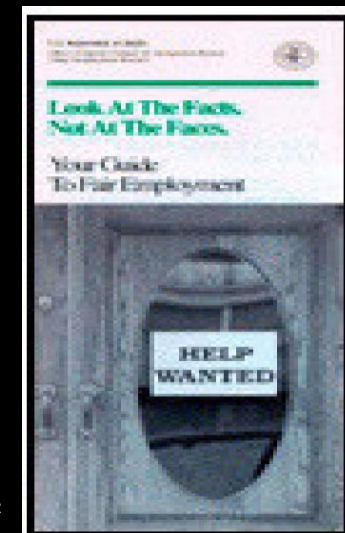


Worker Brochure

www.justice.gov/crt/osc/

Email: osc crt@usdoj.gov

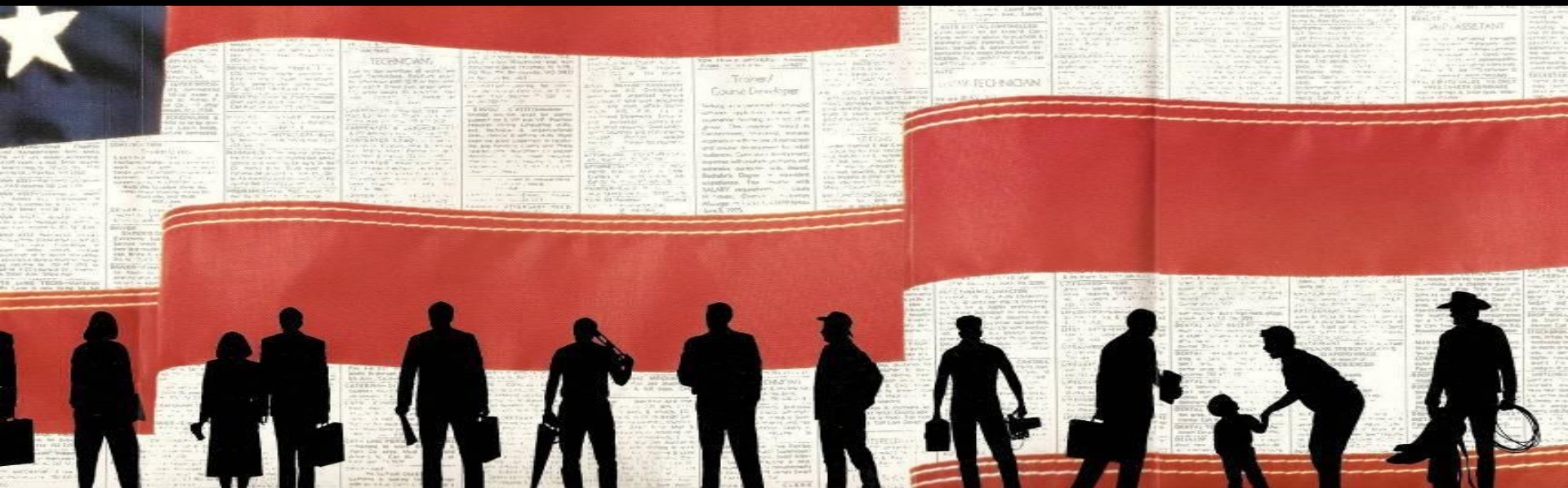
Employer Brochure



THANK YOU!

Office of Special Counsel for Immigration-Related
Unfair Employment Practices

***IF YOU HAVE THE RIGHT TO WORK,
DON'T LET ANYONE TAKE IT AWAY.***



Employer Hotline: 1-800-255-8155

Employee Hotline: 1-800-255-7688



Office of Special Counsel for
Immigration-Related Unfair Employment Practices

*IF YOU HAVE THE RIGHT TO WORK,
DON'T LET ANYONE TAKE IT AWAY.*



Employer Hotline: 1-800-255-8155
Employee Hotline: 1-800-255-7688



**Office of Special Counsel for
Immigration-Related Unfair Employment Practices**